

1FEDERAL RAILROAD ADMINISTRATION
Train Crew Size Safety Requirements
(49 CFR Part 218, Subpart G)
SUPPORTING JUSTIFICATION
RIN 2130-AC88; OMB No. 2130-NEW

Summary

- This is a new collection of information associated with the Federal Railroad Administration’s (FRA) Notice of Proposed Rulemaking (NPRM) titled Train Crew Size Safety Requirements.
- The Federal Railroad Administration (FRA) published this NPRM in the Federal Register on July 28 2022. See 87 FR 45564. FRA plans to respond to any comments received in response to the NPRM in the final rule.
- The total number of burden hours requested for this submission is 914 hours.
- The total number of responses requested for this submission is 26.
- This entire submission is a program change.
- The answer to question number 12 itemizes information collection requirements.

1. Circumstances that make collection of the information necessary.

FRA is proposing regulations concerning train crew size safety requirements based on the statutory general authority of the Secretary of Transportation (Secretary). The general authority states, in relevant part, that the Secretary “as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.”¹ The Secretary delegated this authority to the Federal Railroad Administrator.²

A minimum requirement of two crewmembers is proposed for all railroad operations, with exceptions for those operations that do not pose significant safety risks to railroad employees, the general public, and the environment by using fewer than two-person crews. FRA also proposes special approval and risk assessment processes to allow railroads to continue operations with one-person train crews, and to allow railroads to establish new operations with fewer than two crewmembers when the exceptions do not apply. This proposed rule would ensure that trains are adequately staffed for their intended operation and railroads have appropriate safeguards in place for safe train operations, whenever a railroad is operating with a crew of fewer than two persons.

¹ 49 U.S.C. 20103.

² 49 CFR 1.89(a).

The proposed rule prescribes minimum requirements for the location of crewmembers on a moving train and promotes safe and effective teamwork. In addition, FRA lacks information on the safety of different-sized crews and the proposed rule would allow FRA to collect data to compare the safety effects of reducing crew sizes.

This supplement report presents estimates of the paperwork burden likely to occur over the first three years of the proposed rule. The paperwork burden analysis includes estimated burdens associated with special approvals, risk assessments, annual railroad responsibilities, and government administrative costs.

2. How, by whom, and for what purpose the information is to be used.

FRA proposes regulations establishing safe minimum requirements for the size of train crews depending on the type of operation. A minimum requirement of two crewmembers is proposed for all railroad operations, with exceptions proposed for those operations that do not pose significant safety risks to railroad employees, the public, or the environment. This proposed rule would also establish minimum requirements for the location of crewmembers on a moving train and promote safe and effective teamwork. FRA also proposes a special approval procedure to allow railroads to petition FRA to continue legacy operations with one-person train crews and allow any railroad to petition FRA for approval to initiate a new train operation with fewer than two crewmembers.

Although the NPRM includes several proposed exceptions to the minimum two crewmember requirement, the rule would prohibit certain train operations from operating with fewer than two crewmembers. Specifically, proposed § 218.123(c) prohibits the operation, without at least a two-person crew, of trains containing certain quantities and types of hazardous materials that have been determined to pose the highest risk in transportation from both a safety and security perspective (e.g., trains transporting 20 or more car loads or intermodal portable tank loads of certain hazardous materials or one or more car loads of hazardous materials designated as rail-security sensitive materials (RSSM) as defined by the Department of Homeland Security).

Under proposed § 218.131, FRA would allow legacy, one-person train operations to continue after the effective date of a final train crew size safety requirements rule until FRA can review the safety of the operation. Moreover, this proposed rule provides a mechanism for the operation to continue after FRA conducts its review.

Under proposed § 218.133, FRA would allow a railroad to petition FRA to initiate a new train operation staffed with fewer than two crewmembers that is not otherwise prohibited or permitted by the other requirements of this subpart. In addition to much of the information FRA proposes to require to support a petition to continue a legacy operation, a special approval petition to initiate a new operation with fewer than two persons must contain a risk assessment of the proposed operation that follows accepted hazard analysis processes and provides for mitigation of identified hazards to acceptable levels. In the context of this rulemaking, a risk assessment is the process of determining, either

quantitatively or qualitatively, the level of risk associated with a proposed train operation staffed with fewer than two crewmembers, including mitigating the risks to an acceptable level.

Under proposed § 218.135, FRA would also allow a railroad to use alternative methodologies or procedures, or both, to conduct a risk assessment if the Associate Administrator finds they will provide an accurate assessment of the risk associated with the proposed operation.

Under proposed § 218.137, a railroad would be able to petition FRA for special approval for both one-person, legacy train operations and the initiation of a new operation with fewer than two train crewmembers.

Finally, FRA proposes under § 218.139 an annual requirement for railroads that receive special approval to continue a legacy operation or initiate a new operation with fewer than two train crewmembers to conduct a formal review and analysis of those operations.

3. Extent of automated information collection.

FRA strongly encourages the use of advanced information technology, wherever feasible, to reduce burden on respondents.

Due to the nature of these proposed requirements, approximately 100 percent of responses will be submitted electronically.

4. Efforts to identify duplication.

To FRA's knowledge, this information is not duplicated anywhere. Similar data is not available from any other source.

5. Efforts to minimize the burden on small businesses.

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. "Small entity" is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a "small entity" in the railroad industry is a for profit "line-haul railroad" that has fewer than 1,500 employees, a "short line railroad" with fewer than 1,500 employees, a "commuter rail system" with annual receipts of less than \$16.5 million dollars, or a contractor that performs support activities for railroads with annual receipts of less than \$16.5 million.³

³ U.S. Small Business Administration, "Table of Small Business Size Standards Matched to North American Industry Classification System Codes, August 19, 2019. https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%202019,%202019.pdf.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a proposed statement of agency policy that formally establishes “small entities” or “small businesses” as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues,⁴ and commuter railroads or small Governmental jurisdictions that serve populations of 50,000 or less.⁵ FRA is using this definition for the proposed rule.

When shaping the proposed rule, FRA considered the impact that the proposed rule would have on small entities. FRA has provided exceptions to the two-person crew requirement which would limit the impact on small entities. In addition, tourist train operations that are not part of the general system may operate with one-person crews.

The proposed rule would be applicable to all railroads, although very few railroads would be affected. FRA estimates there are 744 Class III railroads, of which 704 operate on the general system. These railroads are of varying size, with some belonging to larger holding companies. Currently, nine railroads operate one-person crews; six of which are Class III railroads. Most small railroads would qualify for an exception under section 218.129 which allows for one-person operations if a railroad has under 400,000 employee hours annually and operates less than 25 mph. FRA estimates that 25% of railroads submitting special approval requests each year to initiate operations with fewer than two crewmembers would be Class III railroads.

6. Impact of less frequent collection of information.

Without the collection of information under this proposed rule, FRA may not be aware of the existence of any particular one-person operation. Current rail safety regulations allow railroads to reduce the number of crewmembers on any train operation without necessarily informing FRA and giving FRA the opportunity to review whether the railroad has considered the safety implications of the operation or implementing any off-setting actions that are necessary.

Studies show that one-person train operations can pose increased risks by potentially overloading the sole crewmember with tasks. Task overload can lead to a loss of situational awareness, and thus the failure to have a second crewmember properly engaged could be a contributing factor in some accidents. In other instances, a second crewmember could be instrumental in limiting damages and injuries after an accident takes place.

⁴ The Class III railroad revenue threshold is \$39,194,876 or less, for 2018. (The Class II railroad threshold is between \$39,194,876 and \$489,935,956; and the Class I railroad threshold is \$489,935,956 or more.) See Surface Transportation Board (STB), available at <https://www.stb.gov/econdata.nsf/d03c0c2161a050278525720a0044a825/1acf737531cf98ce8525841e0055e02e>.

⁵ See 68 FR 24891 (May 9, 2003) (codified at Appendix C to 49 CFR part 209).

Railroads would be required to submit a petition for special approval including a risk assessment before commencing train operations with fewer than two crewmembers. Additionally, railroads operating trains with fewer than two crewmembers would be required to submit information to FRA annually as part of the Railroad Oversight Responsibilities. This information will enable FRA to play a more active role in ensuring that railroads appropriately consider any relevant safety risks that may arise from train operations using less than two person crews.

7. Special circumstances.

All information collection requirements contained in this rule are in compliance with this section.

8. Compliance with 5 CFR 1320.8.

FRA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register July 28, 2022, titled Train Crew Size Safety Requirements soliciting comments on the proposed rule and its accompanying information collection requirements from the regulated community, the general public, and interested parties.⁶ FRA will respond to any comments received concerning the proposed rule and its associated collection of information at the final rule stage and in the final rule Supporting Justification.

9. Payments or gifts to respondents.

There are no monetary payments or gifts made to respondents associated with the information collection requirements contained in this proposed regulation.

10. Assurance of confidentiality.

Information collected is not of a confidential nature, and FRA pledges no confidentiality.

11. Justification for any questions of a sensitive nature.

There are no questions or information of a sensitive nature or data that would normally be considered private contained in this proposed information collection.

12. Estimate of burden hours for information collected.

⁶ 87 FR 45564.

The estimates for the respondent universe, annual responses, and average time per responses are based on the experience and expertise of FRA’s Office of Safety.

FRA is including the dollar equivalent cost for each of the itemized hours below using the 2020 STB’s Full-Year Wage A&B data series as the basis for each cost calculation. For professional and administrative staff, the hourly wage rate is \$77.44 per hour (\$44.25 * 1.75). The type of professional skills needed includes the ability to plan and organize work. Such an employee would also need good verbal and written communication skills and attention to detail.

The respondent universe for this proposed rule is estimated at 671 railroads (Class Is, Class IIs, Class IIIs, and passenger and commuter railroads). Note: Tourist railroads are excluded and FRA is currently aware of seven one-person train crew operations.

CFR Section	Respondent Universe ⁷	Total Annual Responses (A)	Average Time per Response (B)	Total Annual Burden (C = A * B)	Total Cost Equivalent in U.S. Dollar (D = C * wage rates) ⁸	Section analyses and estimates
218.123—General crew staffing requirements—Each railroad's adoption or revision of rules and practices with the requirement of this subpart G (New proposed requirement)	671 railroads	3 adopted rules and practices	8 hours	24 hours	\$1,859	<p>Each railroad shall comply with the requirements of this subpart, and may adopt its own rules or practices consistent with the requirements of this subpart. If any person, as defined in § 218.9 (including, but not limited to, each railroad, railroad officer, supervisor, and employee), violates any requirement of a railroad rule or practice implementing the requirements of this subpart, that person shall be considered to have violated the requirements of this subpart.</p> <p>The purpose of this subpart is to ensure that each train is adequately staffed and has appropriate safeguards in place for safe train operations under all operating</p>

⁷ For purposes of this table, there are 671 railroads, excluding tourist railroads not on the general system, in the respondent universe. Additionally, FRA is currently aware of nine one-person train crew operations.

⁸ Throughout the tables in this document, the dollar equivalent cost is derived from the 2020 Surface Transportation Board’s Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75-percent overhead charges.

						<p>conditions, when using a crew of fewer than two persons. FRA expects that some railroads already have such a protocol in place and others may need to develop one.</p> <p>FRA estimates that it will take about 8 hours for each railroad to adopt or revise its own rules and practices.</p>
<p>—(d)(2) Location of crewmember(s) that is not operating the train when the train is moving—Direct communication between train crew members (New proposed requirement)</p>	<p>Direct communications between train crewmembers during train operations are a usual and customary practice. Consequently, there is no burden connected with this provision.</p>					
<p>218.127(c)—Specific passenger and tourist train operation exceptions to two-person crew requirement—Passenger railroads’ emergency preparedness plan approved under 49 CFR 239.201 (New proposed requirement)</p>	<p>The burden for emergency preparedness plans is already included under OMB Control Number 2130-0545. Consequently, there is no additional burden associated with this requirement.</p>					
<p>—(d)(3) Federal Transit Administration (FTA) and designated State Safety Oversight (SSO) Agency approved Public Transportation Agency Safety Plan in accordance with 49 CFR parts 673 and 674 (New proposed requirement)</p>	<p>The burden for approved FTA and SSO Public Transportation Agency Safety Plans is included under OMB Control Number 2132-0558. Consequently, there is no additional burden associated with this requirement.</p>					
<p>218.129(b)(1)-(2)—Specific freight train exceptions to two-person crew requirement—Direct communication between train crewmembers and dispatchers (New proposed requirement)</p>	<p>Direct communications between train crewmembers and dispatchers during train operations are a usual and customary practice. Consequently, there is no burden connected with this provision.</p>					

<p>—(b)(3)-(7) Railroad's method and protocol for determining when communication is lost with a one-person train crew (New proposed requirement)</p>	<p>The burden for this requirement is included under § 218.123.</p>					
<p>—(c)(1)(B) Small railroad operations—Direct communication between crew members (New proposed requirement)</p>	<p>Direct communications between crew members during train operations are a usual and customary practice. Consequently, there is no burden connected with this provision.</p>					
<p>—(c)(3) Remote control operations—Controlling railroad has developed air brake and train handling instructions governing these operations (New proposed requirement)</p>	<p>The burden for air brake and train handling instructions is already included under OMB Control Number 2130-0008 (49 CFR part 232). Consequently, there is no additional burden associated with this requirement.</p>					
<p>218.131(a)-(b)(11)—Special approval petition requirements for continuance of legacy train operations staffed with a one-person train crew (New proposed requirement)</p>	<p>9 railroads</p>	<p>3 one-person train crew operation descriptions</p>	<p>40 hours</p>	<p>120 hours</p>	<p>\$9,293</p>	<p>Except as provided for in § 218.123(c), a one-person train operation that has been established for at least two years before [EFFECTIVE DATE OF FINAL RULE] may continue if the railroad files a special approval petition under § 218.137, containing a description of the operation no later than [DATE 90 DAYS AFTER EFFECTIVE DATE OF FINAL RULE]. A railroad is not required to file a special approval petition if the one-person operation is limited to an exception covered by §§ 218.125, 218.127, or 218.129.</p> <p>FRA estimates that it will take about 40 hours to complete each one-person train crew operation description.</p>
<p>—(b)(12) Copy of any railroad rule or practice that applies to the one-person train crew operation (New proposed requirement)</p>	<p>The burden of this requirement is included above.</p>					
<p>—(b)(13) A disabled-train/post-accident</p>	<p>The burden for this requirement is included under § 218.131(a)-(b)(11).</p>					

protocol (New proposed requirement)						
—(b)(14)-(15) Accident and incident data or any other information describing protections in lieu of a second train crewmember (New proposed requirement)	The burden for this requirement is included under § 218.131(b)(1)-(b)(11).					
218.133(a)(2)—Special approval petition requirements for initiation of train operations staffed with fewer than two members—Passenger railroads seeking to begin train operations with fewer than two crewmembers (New proposed requirement)	There are many exceptions for passenger operations already in existence. Consequently, FRA anticipates no passenger operations would apply for special approval for one-person crews.					
—(b)(1)-(14) Petition for initiation of a train operation staffed with fewer than two crewmembers that does not meet an exception identified in §§ 218.125 through 218.131 (New proposed requirement)	671 railroads	3 waiver petitions	40 hours	120 hours	\$9,293	Each petition for initiation of a train operation with fewer than two crewmembers that does not meet an exception identified in §§ 218.125 through 218.131 must contain sufficient information for FRA to determine whether approving the petition operation is consistent with railroad safety. FRA estimates that it will take about 40 hours to complete each waiver petition.
—(b)(15) Risk assessment for initiation of a train operation staffed with fewer than two crewmembers that does not meet an exception identified in §§ 218.125 through 218.131 (New proposed requirement)	671 railroads	3 risk assessments	120 hours	360 hours	\$27,878	A risk assessment of the proposed operation that meets the requirements of § 218.135; and any other information describing protections provided in lieu of a second train crewmember, or other relevant data or analysis. FRA may request any additional information, beyond what is provided in the petition, that it deems necessary. FRA estimates that it will take about 120 hours to complete each risk assessment.
—(b)(15) Revised risk assessment after FRA's initial of the risk assessment for a	671 railroads	1 revised risk assessment	24 hours	24 hours	\$1,859	Additionally, if the risk assessment is incomplete or does not address all hazards presented by one-person operations, FRA may require a railroad to revise their

train operation staffed with fewer than two crewmembers that does not meet an exception identified in §§ 218.125 through 218.131—Railroads' response to FRA (New proposed requirement)						risk assessment. This would happen after FRA has reviewed the initial risk assessment as part of the special approval process. Thus, FRA estimates that it will take about 24 hours to complete each revised risk assessment.
218.135(a)—Risk assessment content and procedures—General (New proposed requirement)	The burden for this requirement is included under § 218.133(b)(15) and § 218.137(e).					
—(b) Alternative standard—Petition for approval to use alternative methodologies (New proposed requirement)	The burden for this requirement is included under § 218.133(b)(15), § 218.137(e), and § 218.139.					
218.137(c)—Special approval procedure—Comments sent to FRA on petitions for special approval (New proposed requirement)	Railroad industry and interested parties	2 petition comments	1 hour	2 hours	\$155	Not later than 30 days from the date of publication of the notice in the FEDERAL REGISTER under paragraph (b) of this section, any person may comment on the petition. (1) Each comment shall provide all relevant information and data in support of the commenter's position. (2) Each comment shall be submitted to FRA through http://www.regulations.gov . FRA estimates that it will take about one hour to complete each comment and submit it to the docket.
—(d)(1) Disposition of petitions—Hearings on petitions (New proposed requirement)	The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(a)(2) because this activity is conducted during an administrative action affecting specific individuals or entities.					
—(d)(2) Special approval procedure—Disposition of petitions—Petitioners' response to FRA's special conditions to the approval of petition (New proposed requirement)	The burden for this requirement is included under § 218.137(e).					
—(e) Modified operation submitted to FRA—Legacy	9 railroads	1 risk assessment	120 hours	120 hours	\$9,293	A railroad that intends to materially modify an operation subject to an FRA approval under this section

railroads (New proposed requirement)						shall submit a description of how it intends to modify the operation and either a new or an updated risk assessment accounting for the identified proposed modifications. FRA estimates that it will take about 120 hours to complete each modification by legacy railroads.
—(e) Modified operation submitted to FRA—New one-person operation (New proposed requirement)	671 railroads	2 updated risk assessments	40 hours	80 hours	\$6,195	Additionally, FRA estimates that it will take each non-legacy railroad about 40 hours to complete each modification.
218.139— Annual railroad responsibilities after receipt of special approval—Annual review and analysis of FRA-approved train operation(s) (New proposed requirement)	671 railroads	8 annual reviews	8 hours	64 hours	\$4,956	Each railroad that receives special approval under either § 218.131 or § 218.133 shall conduct a formal review and analysis each calendar year, of the FRA-approved train operation(s) with fewer than two crewmembers, and report to FRA its findings and conclusions from its review no later than March 31 of the following year to FRAOPCERTPROG@dot.gov. FRA estimates that it will take about 8 hours to complete each annual report.
—(b)(7) Written confirmation that the risk assessment for operations approved under § 218.133 (New proposed requirement)	The burden for this requirement is included under § 218.139.					
Total ⁹	671 railroads	26 responses	N/A	914 hours	\$70,780	N/A

⁹ Totals may not add due to rounding.

13. Estimate of total annual costs to respondents.

As noted in the regulatory impact analysis (RIA) accompanying this proposed rule, there are no additional annual costs to respondents besides the burden hours shown above.

14. Estimate of Cost to Federal Government.

As noted in the RIA, FRA estimates this proposed rule would impose some costs on the Government. FRA would review the special approval information submitted by railroads and determine whether an operation is deemed suitable for initiation or continuance with fewer than two crewmembers. FRA would also review risk assessments provided with requests for special approval and when material modifications are made. Finally, FRA would review information annually as required by the railroad oversight responsibilities.

The total estimated Government administrative cost would be \$462,082 over the 3-year analysis. On an annual basis, FRA estimates about \$154,027 to the Federal Government for this proposed information collection request.

15. Explanation of program changes and adjustments.

This is a new collection of information associated with FRA's proposed rule that adds a new subpart G, Train Crew Size Safety Requirements, under 49 CFR part 218. The total burden requested for this submission amounts to 914 hours, and the total number of responses requested is 26. The entire requested burden is a program change.

There is no additional costs to respondents.

16. Publication of results of data collection.

There are no plans for publication regarding this information collection.

17. Approval for not displaying the expiration date for OMB approval.

FRA is not seeking approval to not display the expiration date.

18. Exception to certification statement.

No exceptions are taken at this time.